CORPORATIONS — STOCKHOLDERS — DIVIDENDS ON PREFERRED STOCK. — The preferred stock of the defendant corporation was entitled to a preferential yearly dividend of five per cent. For eight years the stipulated dividend was paid, while dividends on common stock were, except for two years, always less than five per cent. An eight per cent dividend was then declared on both preferred and common stock. The plaintiff, a common stockholder, sought to restrain the payment of more than five per cent on the preferred stock. *Held*, that in the absence of an express contract to that effect, dividends on preferred stock are not limited to the amount of the preference. *Sternbergh* v. *Brock*, 74 Atl. 166 (Pa.).

The peculiar rights of preferred stockholders are wholly a matter of contract, determined by the terms of the stock certificates and the by-laws and acts of the corporation regulating the issue. *Smith* v. *Cork & Bandon Ry. Co.*, Ir. R. 3 Eq. 356, 374; *Belfast & Moosehead Lake R. Co.* v. *Belfast*, 77 Me. 445. When the language is not explicit, the question becomes one of construction. On principle, there seems to be no reason why priority of right should mean restriction of interest. *Fidelity Trust Co.* v. *Lehigh Valley R. Co.*, 215 Pa. St. 610. *Contra*, *Scott* v. *Baltimore & Ohio R. Co.*, 93 Md. 475. The interest which holders of preferred stock have in the business is not that of creditors, entitling them to a certain rate of interest. *Chaffee* v. *Rutland R. Co.*, 55 Vt. 110. In construing these contracts, however, the courts should give great weight to the practical interpretation of the parties themselves. See *Topliff* v. *Topliff*, 122 U. S. 121. Whether or not the common stockholders in the principal case received more than a five per cent dividend during the two years mentioned in the statement of facts, does not appear. If they did, the acquiescence of the preferred stockholders should have been sufficient evidence of their understanding of the contract, to have justified the court in adopting the construction contended for by the plaintiff. *Cf. Kidwell* v. *Baltimore & Ohio R. Co.*, 11 Grat. (Va.) 676.

CRIMINAL LAW — STATUTORY OFFENSES — ILLEGAL SALE OF LIQUOR BY PARTNER. — A druggist was indicted under a statute making it unlawful "for any person, personally or by agent," to sell liquor under certain circumstances. The sale was made by the defendant's partner, in his absence and without his knowledge or consent. *Held*, that the defendant can be convicted. *State of Ohio* v. *Turner*, 54 Oh. L. Bull. 409. (Oh., Ashtabula Prob. Ct., July, 1909.)

The theory governing criminal responsibility for the acts of an agent or partner is entirely different from that of vicarious civil liability. See *George* v. *Gobey*, 128 Mass. 289; *People* v. *Parks*, 49 Mich. 333. At common law, a man can be held for another's crime only when he has, in some sense, caused it. Thus, a principal, to be punished for his agent's criminal act, must have directed or assented to it. *United States* v. *Ash*, 75 Fed. 651. For violations of liquor laws, implied authorization is sufficient ground for conviction. *State* v. *Bierman*, 1 Strobh. (S. C.) 256; *Moore* v. *State*, 64 Neb. 557. But authorization of some kind is an indispensable requisite for holding a merchant who was not present at the illegal sale. *Commonwealth* v. *Wachendorf*, 141 Mass. 270; *Beane* v. *State*, 72 Ark. 368. *Contra*, *State* v. *Gilmore*, 80 Vt. 514. A statute unequivocally imposing an absolute duty abolishes this requisite. *Mullinix* v. *People*, 76 Ill. 211. Where the legislature has not imposed this duty in unmistakable terms, the courts have reached diverse and irreconcilable results; and the decisions under statutes very similar to the one set out above have not been uniform. See *Barnes* v. *State*, 19 Conn. 398; *People* v. *Longwell*, 120 Mich. 311. While in the principal case the court did not rigidly adhere to the rule that a criminal statute is not to be construed to hold a person unless he is unequivocally included within its terms, the interpretation is reasonable and is likely to be followed, as the courts seem to be influenced by the prevailing movement against liquor.

DAMAGES — CONSEQUENTIAL DAMAGES — WHAT IS SUFFICIENT NOTICE OF SPECIAL FACTS. — Owing to the defendant's delay in transporting a machine,

the plaintiff's sawmill was forced to remain idle. The only notice of this consequence was such as might be inferred from the character of the machine itself. *Held*, that the defendant is liable for the consequent loss of profits. *Story Lumber Co.* v. *So. Ry. Co.*, 65 S. E. 460 (N. C.).

A defendant is liable not only for the natural or usual consequences of a breach of contract, but also for such special damages as the parties ougnt reasonably to have contemplated. *Hadley* v. *Baxendale*, 9 Exch. 341; *Devlin* v. *The Mayor*, 63 N. Y. 8. In other words "natural consequences" for which one is liable are those which the parties with their actual knowledge ought reasonably to have apprehended. See SEDGWICK, DAMAGES, 8 ed., § 153. It is never necessary for the parties actually to foresee the consequences. See 19 HARV. L. REV. 531. Hence a defendant need be informed only of such special facts as would constitute notice to a reasonable man. Such notice may be given by an explicit statement or by some act or circumstance from which the average man would infer the existence of the special facts. *Simpson* v. *London & N. W. Ry.*, 1 Q. B. D. 274. The character of the goods alone may be enough. Thus by their very nature, theatrical properties may afford notice to a carrier that delay in transportation will prevent a theatrical performance. *Weston* v. *Ry.*, 190 Mass. 298. But as a question of fact, it is doubtful whether a carrier of machinery ought to infer that it is intended for immediate use, for as often as not, machinery is ordered to anticipate future needs. See *Thomas, etc., Mfg. Co.* v. *Ry.*, 62 Wis. 642.

DAMAGES — MEASURE OF DAMAGES — INJURY FROM FRIGHT ACCOMPANIED BY CONTACT. — A few drops of melted lead were negligently cast on the plaintiff by a slight explosion. The fright produced so affected her that she suffered three miscarriages within the next few months. *Held*, that she cannot recover for the fright or its consequences. *Hack* v. *Dady*, 118 N. Y. Supp. 906 (Sup. Ct., App. Div.).

For bodily injury caused by fright unaccompanied by physical contact, a claim for damages is not usually allowed. *Spade* v. *Lynn & Boston R. R. Co.*, 168 Mass. 285. Although such a claim is logically unimpeachable, the rule against recovery is laid down because of the supposed impracticability of otherwise overthrowing numerous trumped-up suits. *Mitchell* v. *Rochester Ry. Co.*, 151 N. Y. 107. Where the reality of the cause is proved by visible injury from actual contact, it is unfair to press this arbitrary rule at the expense of meritorious claimants. The doctrine of the principal case would exclude fright or its consequences as a basis for damages in any ordinary action for negligence, and is against the decided weight of authority. *Lofink* v. *Interborough Rapid Transit Co.*, 102 N. Y. App. Div. 275; *Homans* v. *Boston Elevated Ry. Co.*, 180 Mass. 456.

DOMICILE — INTENTION REQUISITE TO EFFECT CHANGE — FOREIGNER IN CHINESE TREATY PORT. — One born in Maine went to Shanghai as a youth and remained until his death about forty years later. *Held*, that his will should be admitted to probate in the United States consular court in Shanghai. *Mather* v. *Cunningham*, 3 Am. Journ. Int. L. 752 (Me., Sup. Ct., Apr. 15, 1909). See NOTES, p. 211.

EQUITY — JURISDICTION — PREVENTION OF MULTIPLICITY OF ACTIONS. — The plaintiff brought a bill in equity joining A and B as defendants. The bill alleged that the plaintiff owned a lot fifty feet wide, that A owned a lot on one side and B owned a lot on the other side of the plaintiff's lot, that all three claimed under a common grantor, that A and B had erected buildings on their lots, that these buildings were less than fifty feet apart, but that the plaintiff's surveyors could not agree as to which defendant was encroaching. The bill prayed for a determination of the encroachment and a decree for the removal of the encroaching building and damages. *Held*, that the bill is not demurrable. *Caleo* v. *Goldstein*, 118 N. Y. Supp. 859 (Sup. Ct., App. Div.).